

Adverse Action

► Notice Sent with Another Copy of Summary of Rights

Disqualification of Applicants and Employees

- ▶▶ Can Disqualify Based on Information in Report Even if the Information was not Requested on the Employment Application or During the Job Interview
- ▶▶ Generally, Disqualification Decisions Should Be Based on Individualized Analysis of Job-Related Issues Raised by the Report
 - ▶ Practical concerns due to client requests – many concerns ameliorated if other work is available

Types of Checks - Criminal

► In Regard to Criminal Searches, be Careful of State Limitations on Use of...

- Convictions
- Arrests
- Pending Arrests
- Non-Criminal Offenses

NEW EEOC FOCUS – DISPARATE IMPACT – must not have per se disqualification policies

Types of Checks - Criminal

- ▶▶ Again, Recommendation Is To Ensure Job-Relatedness as well as, of course, compliance with any state mandate.
- ▶▶ Issue Avoided If Employment Application Has Lawful Inquiry Regarding Criminal Background And Individual Misrepresented or Omitted Information.
- ▶ Except In Hawaii And Massachusetts

Types of Checks - Credit

- ▶▶ Again, EEOC And Disparate Impact.
- ▶▶ State Law Limitations – Illinois, Hawaii, Oregon and Washington
 - ▶ California Legislation On Governor’s Desk
 - ▶ Related Disclosure Obligations In Certain Instances

Types of Checks - Credit

- ▶▶ Again, Recommendation Is To Ensure Job-Relatedness as well as, of course, compliance with any state mandate.

Additional Issues – Recordkeeping

- For Those Not Hired- Master File
- For Those Hired- Either Master File Or Personnel File
- Master Best If Many Have Access to Personnel File
- Control Dissemination Of Electronic Copies

Additional Issues - Retention

SEC. 156 STATUTE OF LIMINATIONS

Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

Sec. 618. Jurisdiction of courts; limitation of actions

“An Action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of

(1) 2 years after the date of discovery by the plaintiff of violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.”